

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

September 25, 2003

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IN RE: Petition of Tennessee UNE-P Coalition )  
to Open Contested Case Proceeding to Declare ) Docket No. 02-00207  
Unbundled Switching an Unrestricted )  
Unbundled Network Element )

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COMMENTS OF UNE-P COALITION

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In response to the Hearing Officer's Order of September 15, 2003, the UNE-P Coalition submits the following comments regarding the handling of this proceeding while the Tennessee Regulatory Authority is simultaneously engaged in implementing the FCC's Triennial Review Order (CC Docket Nos. 01-338, 96-98, and 98-147).

**Background**

As the Hearing Officer noted in his Order, the UNE-P Coalition seeks in this petition to have unrestricted access to local switching throughout the service area of BellSouth Telecommunications, Inc. In denying a Motion to Dismiss filed by BellSouth, the TRA has ruled that it has the authority to grant the Coalition the relief it seeks under 47 U.S.C. § 251 (d)(3) and the guidelines set forth in the FCC's Third Report and Order, 15 FCC Record 3696 (1999). See "Initial Order Denying BellSouth's Motion to Dismiss and to Strike," issued April 9, 2002, affirmed April 24, 2002.

In the Triennial Review Order issued last month, the FCC again addressed the role of the states in establishing unbundled network elements in general and the availability of circuit switching in particular. The TRA has opened two dockets, 03-00490 and 03-00491, to implement the FCC's directions regarding the availability of local switching as a UNE. In light

of the anticipated release of the Triennial Review Order, no filings have been made in Docket No. 02-00207 since March, 2003.

Although the TRA and other state commissions are rapidly moving ahead with proceedings to implement the Triennial Review Order, the legal future of that Order is under attack. Virtually all aspects of the Order, especially those parts dealing with unbundled local switching and state proceedings, have been challenged by various carriers, including BellSouth. Motions for stays, for expedited review, and even a motion for an order of *mandamus* against the FCC are now pending in federal courts across the country. How or when these appeals will be resolved is unknown at this point.

In light of this uncertainty, the UNE-P Coalition believes that the most prudent course of action is to leave this docket open but to suspend further proceedings pending the outcome of those appeals of the Triennial Review Order and/or the completion of the TRA's dockets which have been opened to implement the Order.

It is possible, indeed likely, that when the TRA completes its work implementing the Triennial Review Order the issues raised by the Coalition's Petition will be moot. At this time, however, there can be no assurance of that result. Keeping this docket open -- but suspended -- preserves the rights of the parties to reinstitute these proceedings should circumstances warrant. It also preserves the considerable body of data collected by the staff regarding competitive switching in Tennessee. Moreover, if further proceedings in the UNE-P docket are suspended, neither the parties nor the agency need spend any further time or resources on that docket until it is determined whether the Coalition's petition has been mooted by subsequent developments.

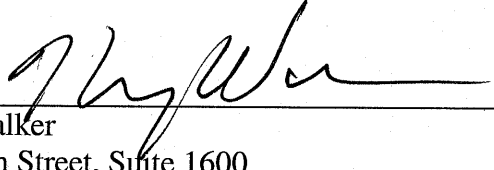
**Conclusion**

For these reasons, the Coalition request that the docket remain open, but suspended, pending the outcome of the appeals of the Triennial Review Order and/or the completion of the TRA's dockets implementing that Order.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 25th day of September, 2003.

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